

Michael McNeil #05311
ESP-60B-31-A
P.O. Box 1989
ELY, NV 89301

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Michael McNeil,

Plaintiff,

Case No. 2:18-cv-01594-RFB-BNW

v.

DAVE MOINAR, et al.,

MOTION TO COMPEL DISCOVERY REQUEST

Defendant(s)

Plaintiff, Michael McNeil, pro se, moves this court for an ORDER Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure Compelling the following Defendants, Dwight NEVEN, QUENTIN BYRNES, DAVE MOINAR, and William Glass, to produce for inspection and Copying the following documents; "all documents tangible in Relations to OIC #402605 / Appeal Procedure, grievance No. 2004-30-16492, Direct and indirect Communications with investigators, subordinates, Supervisors, and any members of the I.G.'s office, all documents of evidence produced from the investigation through the I.G.'s Office that was used and not used as evidence towards Plaintiff's OIC #402605, any and all emails, text messages, electronics or Handwriting indicia, memorandums, interdepartment correspondence, Investigative files, cronologs or any electronically stored data Relating to OIC #402605".

The Defendants cited numerous excuses as to why they

(PAGE 1 OF 5)

1 Objected to Plaintiff's Discovery Request such as Defendants Being
2 "Former Employees" "Relevance" "Confidentiality" "Privileged" and Request
3 Being "Overly Broad and Unduly Burdensome".

4 In Reality in regards to Plaintiff's Production of Document Request,
5 Defendants have not produce much of anything but a bunch of objections
6 that the Plaintiff received two weeks to the Discovery deadline.
7 Defendants are clearly attempting to impede Plaintiff's process in
8 marshalling facts.

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10 B) Defendants fail to produce evidence based on
11 Being "Former Employees"

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13 Defendants Dwight Neven, Quentin Byrne and David
14 Molnar all claim to not be in possession based on being former
15 employees and "does not have access to any information related to
16 OIC 402605 or grievance 2006-30-16492"

17 However Defendants are still represented by the State of
18 Nevada, so this defense is baseless and goes without merit. There
19 Attorney also represents several other NDOC employees including High
20 Ranking Prison officials, so access to OIC 402605 and such is not
21 a request that is impossible, especially since this entire lawsuit
22 is surrounding Plaintiff's disciplinary guilty finding (OIC #402605)

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24 C) Defendants fail to produce evidence based on
25 "Relevance"

26
27 Federal Rules of Civil Procedure Rule 26(b)(1) holds that
28 (Page 2 of 5)

1 Partys Have a legal Right to anything which is in anyway "Relevant"
 2 to any Partys Claim or defense. This includes anything Relevant to
 3 any defense offered By the Defense as well.

4 IN Set two of A. BYRNE'S responses Defendant Claims
 5 that "Copies of any Correspondence between you [the Defendant], defendant
 6 Molnar and the I. G's Office Between December 1st 2015 to January
 7 31st 2016 relating directly to Jamal Harris # 1125934, Jesus Echavarria
 8 # 1117998 and Plaintiff" was irrelevant. Plaintiff finds this extremely
 9 difficult to Believe this is Not relevant when so much of the
 10 Defendants position in finding Plaintiff Guilty of OIC # 402605
 11 WAS Based on the things Jamal Harris and Jesus Echavarria said to
 12 them. Fed R. of Evidence Rule 402 "evidence that is otherwise
 13 Relevant and admissible does not become irrelevant and inadmissible
 14 merely because the party against whom it is offered
 15 stipulates to the consequential fact it is offered to prove. 7 in order
 16 to exclude the evidence, its opponent must point to some Rule,
 17 privilege or statute that justifies exclusion."

18
 19 Defendants are clearly wasting this Court's and Plaintiff's time.

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 21 i) Defendants fail to produce evidence Base on
 22 Confidentiality and Privilege

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 24 All the Defendants claim that Plaintiff's Request were Confidential
 25 or Privilege. However prison officials cannot avoid disclosure of Relevant
 26 information merely By Claiming it is "Confidential or Privilege" See
 27 Beach v. City of Olathe, Kansas, 203 F.R.D. 489 (D. Kan. 2001)

28 (Page 3 of 5)

Claiming any information that is "Privileged or Confidential" that Party would HAVE the Burden of Proving why that information is Privileged or Confidential.

E) Defendants fail to Produce Evidence Base on Evidence Being "Overly Broad and Unduly Burdensome".

This lawsuit is about five years in the making so Of course its going to take some Real effort to acquire. Even when defendants Can show that Producing the Requested information would Be very expensive and difficult, Courts generally Have not let that Be the reason for allowing a party to Not Produce Evidence. See Alexander v. Rizzo, 50 F.R.D. 374 (E.D. Pa. 1976) in this case the Court ordered a police department to Compile information requested By Plaintiffs in a Section 1983 Suit even though the Police Claimed it would Require "Hundreds of employees to Spend many years of mad Hours" The Burden and expense involved was Not "Undue" Because the information was essential to the Suit and Could Not Be Obtained any other way. In for that Reason defendants should Be ordered to provide all information they Claim is "Overly Broad and unduly Burdensome".

F) Conclusion

For the Reasons stated Above, Plaintiff asks for this Court's indulgence while Reminding it that He continues to operate at all times under Hughes v. Rowe, 449 U.S. 5, 9, (1980)

(Page 4 of 5)

1 "Allegations of pro se litigants are held to a less stringent standards
2 than formal pleadings ~~are~~ drafted by lawyers"

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Respectfully Submitted,

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X Michael McNeil

12-14-21

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Order

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IT IS ORDERED that ECF No. 56 is DENIED without
prejudice. Plaintiff must meet and confer with
Defendants before filing discovery motions. If, after the
parties meet and confer, they cannot resolve the
issues raised in this motion, Plaintiff may refile the
motion with the meet-and-confer-certificate required by
the Local Rules. Additionally, if Plaintiff refiles his
motion, he must include a copy of the text of each
request he is moving to compel a further response to,
a copy of the defendant's objection, and an
explanation as to why he is entitled to the discovery.

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IT IS SO ORDERED

DATED: 12:06 pm, December 16, 2021

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BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

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Certificate of Service

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I Michael McNeil, hereby certify that I E-File a true
and correct copy of the foregoing to: Alexander U. Smith
555 E. Washington Ave. #12* 59002201.NYB9101

X Michael McNeil

12-14-21